

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI,

Respondent,

v.

MARK ROTTINGHAUS,

Appellant.

DOCKET NUMBER WD71910

DATE: May 25, 2010

Appeal From:

Circuit Court of Jackson County, MO
The Honorable John M. Torrence, Judge

Appellate Judges:

Division Four: Victor C. Howard, P.J., James Edward Welsh and Gary D. Witt, JJ.

Attorneys:

James L. McMullin, Kansas City, MO

Counsel for Appellant,

Attorneys:

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Counsel for Respondent.

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI, Respondent, v.
MARK ROTTINGHAUS, Appellant**

WD71910

Jackson County

Before Division Four Judges: Victor C. Howard, P.J., James Edward Welsh and Gary D. Witt, JJ.

Mark Rottinghaus appeals the circuit court's judgment denying his application for unconditional release under section 552.040, RSMo 2000. Rottinghaus asserts that the State failed to prove by clear and convincing evidence that he is presently suffering from a mental disease or defect that makes him presently dangerous to himself and others, that he is presently unable to conform his conduct to the requirements of the law, and that, in the foreseeable future, he is likely to have a mental disease or defect and be unable to conform his conduct to the requirements of the law.

AFFIRMED.

Division Four Holds:

(1) The Eighth Circuit Court of Appeals in *Revels v. Sanders*, 519 F.3d 734 (8th Cir. 2008), did not shift the burden upon the State to prove by clear and convincing evidence that Rottinghaus still suffers from a mental illness rendering him dangerous to the safety of himself or others. Even after *Revels*, the burden of persuasion remains on the party seeking unconditional release to prove by clear and convincing evidence that he does not have a mental disease or defect rendering him dangerous to the safety of himself or others.

(2) Substantial evidence supported the circuit court's judgment denying Rottinghaus's application for unconditional release. Rottinghaus did not establish by clear and convincing evidence that he does not have, and in the reasonable future is not likely to have, a mental disease or defect rendering him dangerous to the safety of himself or others. While the circuit court erroneously shifted the burden of proof to the State as was advocated by Rottinghaus, the circuit court correctly concluded that, even under those parameters, Rottinghaus was not entitled to an unconditional release.

Opinion by: James Edward Welsh, Judge

May 25, 2010

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